1953. **File No.** BRA 2152 II

783
Rev(I) dt 22/2/57 **DEPARTMENT**

ERS Dept No. 146/57 **BRANCH** B Class

Karnatak

Subject:—

Bombay Rent Act 1947

ordinance issued by

(copies from file BRA 2152 II)

Bd Dept 23/3/57
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B Class

P.35 I D-1 E

Karnatak

BRA 2152 - II

File No.

G. R., G. D., No. 2408, dated 22-6-22.]

Correspondence

DOCKET SHEET

Subject :—

File No._____

_____ **DEPT.**

_____ **BRANCH.**

Reterences :—

Date.	To whom sent.	Notes and instructions.

Legal Department.

The draft of the Ordinance was discussed with the Advocate General. The Advocate General is of opinion that the present Ordinance should confine itself to the actual point decided by the Supreme Court. Accordingly it should only explain that the premises belonging to the Government or a local authority should beexplained as including buildings erected on land taken on lease from the Government or local authority. The Ordinance will have to be followed by an Act and it should then be considered whether it is necessary to include any other cases which by implication may or may not fall within the decision of the Supreme Court. The P.W.D. has asked to ascertain the views of the Bombay Municipal Corporation and the Port Trust and no reply seems to have been received. I had a discussion with the Municipal Commissioner and in accordance with his suggestions based on the legal advice of his Solicitor, an addition has been made to the clause. As the matter is urgent, the draft of the Ordinance may be sent to the Government of India for the President's instructions and an early reply should be requested.

Sd/-

Additional Secretary to Government.

hss.30/5

Legal Department.

A copy of the judgment of the Supreme Court in the Bhatia Co-operative Housing Society's case relating to what is known as the New Sitaram Buildings is sent herewith. The plot which was the subject-matter of the said case was leased by the Bombay Improvement Trust. The property of the Bombay Improvement Trust now vests in the Bombay Municipal Coroporation. The Supreme Court holds that by the terms of the lease the demise is not only of the land, but also of the building standing thereon. In support of this conclusion the Supreme Court relies on various clauses of the lease which provide -

1) that the lessee cannot on his own account use the building n in any way he likes,

2) that if the premises are destroyed by fire or otherwise, the lessee must reinstate them,

3) that on forfeiture the lessor can re-enter on the land as well as buildings.

According to the Supreme Court all these considerations indicate that the lessor has the dominant voice and real ownership and his interest cannot be described as merely contigent. On these facts the Supreme Court held that the premises in question belonged to the local authority and under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 were exempt from its operation. Apart from the question whether the view of the Supreme Court is correct or not, the interpretation put by the Supreme Court on the lease will be declared law and will under Article 141 of the Constitution be binding on all Courts. Although the above decision relates to

the construction of the lease relating to land owned by the Bombay Municipal Corporation, it appears that the leases relating to reclamation and other lands owned by Government are similarly worded. It is, therefore, necessary to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947. In order to avoid unnecessary complications which may arise in consequence of the atempts of landlords of buildings on such lands, it is necessary that an Ordinance will have to be promulgated.

2. The P.W.D. is the Department which is concerned with the administration of the Act. A tentative draft of the Ordinance is sent herewith. As the subject-matter of the Ordinance relates to an item in the Concurrent List, the instructions of the President will have to be obtained under the proviso to clause (1) of Article 213 of the Constitution. The P.W.D. will have to take immediate steps in the matter. As the Bombay Municipal Corporation is concerned, the P.W.D. should show the draft to the Corporation also. In preparing the draft of the Ordinance, an opportunity has also been taken to insert a clause therein that the Rent Act applies to premises which are let to the Government by a local authority and vice versa. A doubt has been raised on this point by the Bombay Port Trust.

3. The draft Ordinance was submitted to Minister (Law) and he has approved it. The draft is being shown to the Advocate General before it is finalised.

--Sd/-
Additional Secretary to Government.

U.R. to P.W.D., No.1232/B-Confl. dated
the 13th November 1952.

hss.30/5

Public Works Department,

Bombay Castle, 1952.

Ordinance No. of 1952.

An Ordinance to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Whereas both the Houses of the Legislature of the State of Bombay are not in session;

And whereas the Governor of Bombay is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of amending the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, Bom.LVII of 1947. in the manner hereinafter appearing;

And whereas the instructions of the President under the proviso to clause (1) of Article 213 of the Constitution have been obtained;

Now, therefore, in exercise of the powers conferred by clause 1) of Article 213 of the Constitution, the Governor is hereby pleased to make and promulgate the following Ordinance, namely:-

1. Short, title, extent and commencement.- 1) This Ordinance may be called the Bombay Rents, Hotel and Lodging House rates Control (Amendment) Ordinance, 1952.

2) It extends to the whole of the State of Bombay,

3) It shall come into force at once.

2. Amendment of section 4 of Bombay LVII of 1947.

In section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, after Bom.LVII of 1947.

sub-section (1), the following sub-section now shall be inserted and xh be deemed always to have been inserted, namely :-

"(1A) Notwithstanding anything contained in sub-section (1) or in any judgment, decree or order of a Court, this Act shall also apply -

a) to any sub-tenancy or like relationship created in respect of any premises which are themselves held on tenancy or like relationship immediately from the Government or a local authority; and

b) to any premises let to the Government by a local authority and vice versa. "

STATEMENT

(To be filled in)

Bombay, 1952. Governor of Bombay,

By order of and in the name of
Governor of Bombay,

Secretary to Government.

hss.30/5

BRA 2152.

D.7.D.

H Dr.

Please see note dt. 13-11-52 by the Addl. Secy. to Govt., Legal Deptt. In view of the recent judgement of the Supreme Court in the case of Bhatia Co-oprative Housing Society, Ltd., the L.D. has advised this Deptt. to promulgate an Ordinance amending the Bombay Rents, Hotel & Lodging House Rates Control Act, 1947, extending the scope of the act to premises held on tenancy basis by Govt. or a local body and sub-leased by Govt. or the local body and to premises let to the Govt. by the local authority or vice versa. As the subject matter of the proposed Ordinance is one the items included in the Concurrent List, it will be necy. to obtain the President's consent before the Ordinance is issued. Before this is done, the proposal willhave to be approved by this Govt. The case may accordingly be submitted for orders to M (Housing), M. (L.S.G. & P.H.D.) & C.M. The proposed Ordinance may be circulated to the Council of Ministers or discussed by the Cabinet, as the C.M. may direct. The urgency of the case has been explained in para. 1 of the L.D. note.

2. In view of 'A' of L.D.'s note, a copy of the proposed draft Ordinance and extracts fromthe Addl. Secy., L.D.'s note may be sent today under a do.letter to the Municipal Commissioner, Bombay, for his information and

immediate remarks, if any. Draft is put up for approval.

Id/-

H BR. P. W. D.

This case was brought back from M (Revenue)'s office for issuing the draft at page 11 post. M (Housing) & M (Revenue) have been the case. As the next meeting of the cabinet is on the 20th instant, the case may be submitted to C.M. fororders regarding 'A' on the reverse. (25 spare copies of the R.L.A.'s note and the Draft Ordinance are put up below)...

Id/-

C.S. informed that C.M. has agreed.

Id/-

C.M. had agreed not to the draft Ordinance but to the cabinet meeting on 20-11-52.

Id/-

A copy of the draft Ordinance is now raised and approved by M (Law) with a note for the cabinet meeting is placed below.

Id/-

hss.30/5

BRA 2152

H.BR. P. W. D.

Resubmitted.

2. As no reply has so far been received to Government Letter No.BRA/2152-H, dt. the 20/11/52, the draft put up for approval may issue.

Id/-

hss.31/5

BRA/2152

H.HR. P.W.D.

Submitted with reference to this Deptt. letter, dated the 20th Nov. 1952.

Please see telegram from the G. OF I., Min. of Home Affairs, in which they have communicated the approval of the President to the proposed Ordinance to amend section 4 of the Rent Control Act. The Ordinance can now be issued after getting the Governor's consent. A copy (printed) of the Ordinance along with a Statement of Objects and Reasons may be sent to the Secy. to the Governor for obtaining the Governor's approval. (The draft Statement of Objects and Reasons for approval). The draft of the Ordinance may be the same as was circulated to, and approved by, the Cabinet. (In the draft sent to the G. of I., slight changes were made in L.D., but they are unnecessary). Draft letter to the Secretary to Governor is put up for approval. A letter to the Manager, G.G. Press, for sending printed copies of the Ordinance is also put up for approval. The letter may issue first.

Id/-

s. 1/5

Statement of Objects and Reasons.

The Supreme Court in its judgment on a case before it has decided that the premises which are on land taken on lease from Bombay Municipal Corporation, should be held as belonging to the local authority and that under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, such premises were exempt from the operation of the Act. The interpretation put by the Supreme Court on the lease would lead to the exclusion from the Act of all the numerous premises built on lands leased from Government or a local authority and would deprive thousands of people from the benefits of the Act. and make them victims of the evils of pugree, unrestricted rents, wanton eviction etc. In order to avoid unnecessary complications which may arise in consequence of the Supreme Court's judgment, it is necessary to take immediate steps to amend section 4 of the Act suitably, so that the provisions of the Act will definitely cover premises erected on lands leased from Government or a local authority. This Ordinance seeks therefore to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 as mentioned above.

Id/-

H. BR

P. W. d.

Submitted with reference to this Department letter, dt. 11-12-52.

2. The Governor has approved the proposed Ordinance and signed the copy sent to him. Action for publication of the Ordinance has now to be taken.

3. The following procedure is to be followed:-

1) The Number of the Ordinance has to be obtained from the L.D.

2) Secretary of the Deptt. has to sign the o/c of the Ordinance (copy signed by the Governor) and the date on which the secretary signs the Ordinance, will be the date of the Ordinance.

3) One fair copy has then to be sent to the Press for publication of the Ordinance in the B.G.G. Proof-copy has to be examined by L.D. before issue.

4) Necessary no. of copies should be obtained from the Press (for placing before the Legislature in the Next session when the Ordinance is converted into an Act).

4. Accordingly, the no. of the Ordinance has been obtained from the L.D. The Ordinance should be numbered 1 of 1952. Secretary will please sign the o/c of the Ordinance. A draft letter to the G.C.Press is put up. Shri Dhotre, Supdt., L.D., informed office yesterday evening that he wuuld go to the Press to examine the Proof-copy there, to save time.

5. After issue of the Ordinance, further action reg. legislation to convert the Ordinance into an Act, extension of the life of the existing Rent Control Act, etc, will be taken.

Id/-

BRA/2152

H.Dr. P. W. D.

The Ordinance at page 283 - c/s was promulgated on the 13th December 1952.

2. The remarks contained in para. 3 of the letter dt. 12-12-52, from the Secretary to the Governor, have been noted. As verbally directed by Secretary, the remarks may be brought u.o. to the notice of the L.D. also under whose instructions, the letter to the G. of I. Min. of Home Affairs, for obtaining the President's approval was issued.

3. On return of the papers from the L.D., further action regarding legislation will be taken.

Id/-

hss.31/5.

Legal Department.

Seen and returned to the Public Works Department.

2. Action is being taken separately on para. 2 of Secretary to Governor's letter dated the 12th Dec. 1952, on a reference received from the Chief Secretary.

Sd/-

Deputy Secretary to Government
Legal Department.

U.R. to P.W.D.NO.21965/B

dated the 29th December 1952.

h[redacted]31/5

RRA 2152/125941

Public Works Department.
'H'

Submitted with ref. to O.N. dt. the 15-12-52.

2. Pl. see Legal Department's note, dt. 29/12/52. Further action regarding converting the Ordinance amending Sec. 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, into an Act, now required to be taken. The Legal Deptt. may be requested to u.o. to forward to this Deptt. a draft of a Bill containing the matters provided for in the Ordinance (Reg.'A' of Leg.Deptt. note dt. 19-11-1952, please see replies from the Mukhl. Commr., Bombay and the Chairman, B.P.Trust)

3. Sanction to the Bombay Rents, Hotel and Lodging House Rates Control Ac , 1947, expires on the 1st April 1953. Further life of one year may therefore be given to the Act, from 1st April 1953. The Legal Department may be requested to include this provision also in the draft Bill. The Rent Control Enquiry Committee will submit its report to Govt. on 10-1-53. If, on considering the Report, Govt. decided to amend the Act further, a revised draft will have to be prepared. For the time being however, action as suggested above may be taken, if approved.

4. In the original draft of the Ordinance, the Legal Deptt. had proposed an addition to the effect that the Ac shall apply to buildings let to the Govt. by a local authority and vice versa. This addition was not approved by Advocate General as the Supreme Court's judgement did not refer to that point and was not included in the Ordinance. Section 4(1) of the Act as it stands

does not apply to premises belonging to Govt. or a local authority but that it does apply to premises let to the Govt.or a local authority. The proposed addition that "the Act supplies to premises let to Govt. by a local authority or vice Versa", is not in the nature of clarification but would alter the meaning of the Section. When the original Ordinance containing this addition was sent to the Chairman, P.P.T., he had exprressed his objection to the addition vide his letter dt. 18/11/52. At present, there is no material in this Deptt. to warrant the amendment. The items mentioned in para 1 and 3 above only may therefore be included in the draft Bill

1) Converting the Ordinance into an Act.

2) Extension of the Rent Control Act upto 31-3-53

5. If approved, the papers may be referred u.o. to the Leg. Department.

Id/-

U.O.R. to L.D. dt.7/1/53.

hss.30/5

L.A.BILL NO. OF 1953.

A Bill to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

WHEREAS it is expedient to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the purposes hereinafter appearing. It is hereby enacted as follows:

Bom.LVII of 1947.

Short title.

1. This Act may be called the Bombay Rents, Hotel and Lodging House Control (Amendment) Act, 1953.

Amendment of section 3 of Bom.LVII of 1947.

2. In section 3 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, hereinafter referred to as the said Act, in sub-section 2), for the figures "1953" the figures "1954" shall be substituted.

Amendment of section 4 of Bom.LVII of 1947.

3. In section 4 of the said Act, after sub-section (3), the following sub-section shall be added and be deemed always to have been added, namely:-

"(4) The expression "premises belonging to the Government or a local authority" in sub-section (i) shall, notwithstanding anything contained in the sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person immediately from the Government or a local authority, and notwithstanding anything contained in section 15, such person shall be entitled to create a tenancy in respect of such building or part thereof"

Repeal. Bom. Ordinance No.I of 1952.

4. The Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1952, is hereby repealed.

hss.30/5

Statement of Objects and Reasons.

The life of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, expires on the 31st March 1953. The housing shortage is still very acute in several places in this State including places to which Parts II & III of the Act have been applied. It is therefore necessary to extend the life of the Act by a further period of one year from 1st April 1953 to 31st March 1954. Government had appointed a Committee to inquire into the working of the whole Act. The Report of the Committee has only recently been received and would need time for consideration. The status quo is therefore sought to be preserved pending considerations of the Report by extending the Act for one year.

It is also necessary to repeal Bombay Ordinance 1 of 1952 and to re-enact the provisions thereof. The Supreme Court in its judgment on a case before it had decided that the premises, which were on land taken on lease from the Bombay Municipal Corporation, should be held as belonging to the local authority and that under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, such premises were exempt from the operation of the Act. The interpretation put by the Supreme Court on the lease would have led to the exclusion from the Act of all the numerous premises built on lands leased from Government or a local authority and would have deprived thousands of people from the benefits of the Act and made them victims of the evils of pugree, unrestricted rents, etc. In order to avoid unnecessary complications which have arisen in consequence of the supreme

Courts judgment, it was necessary to take immediate steps to amend section 4 of the Act suitably, so that the provisions of the Act would definitely cover premises erected on lands leased from Government or a local authority. As the Legislature was not in session, the Ordinance No. 1 of 1952, to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the purpose as mentioned above, was passed.

The Bill proposes to achieve the above subject...

hss.30/5

BRA/2152/6333

Public Works Department.
'H'

Submitted with reference to office note, dated 2nd Jan. 1953.

2. The Legal Deptt. has forwarded the necessary draft Bill containing the proposed provisions. The H.L.A. has also advised that the entries relating to Cantonment areas in the Schedule to t the Act may be deleted as the Govt. of India, when giving their assent to the Bombay Act III of 1949, (amending the Bombay Rents, Hotel and Lodging House rates contrl Act 1947), had observed that the Govt.of Bombay was not competent to legislate for regulating house accommodation etc. in cantonment areas and had agreed in the end to the amendments, stating however that the State Govt. would have to take the risk of the said amendments being challenged in a Court of Law. Since the L.D. has not quoted any instances, it seems that no such cases as feared by the Govt.of India, has arisen in the past. However in view of the L.D.'s advice, it is for orders whether the proposed clause 4 in the draft Bill should be retained.

3. The contents of para 4 of L.D. note have been noted.

4. A draft statement of Objects and Reasons is put up.

5. The case is submitted for approval of M.(Housing) and M.(Law). After approval is received, the draft Bill together with the .O.R. may be submitted to the C.S. with the request to obtain the orders of the C.M. either for circulation of the Bill or for its submission to the Council of Ministers for

approval.

Id/-

I have slightly amended S.O.R. at page 41.

Regarding clause 4 of the draft Bill, I suggest that we may preserve the current position. Accordingly clause 4 may be omitted at this stage. If Govt. of India return to the charge and require deletion, it may be agreed to them. There has been no challenge to the provisions about the Cantonments in the Courts so far, and the protection and benefit of the Rent Act is necessary even in the Cantonment of Ahmedabad, Poona, Ahmednagar, Belgaum and Kirkee.

Id/-

H. HR.

P. W. D.

These papers may now be submitted to the C.S. with the request to obtain C.M.'s orders for circulation of the Bill for submission to the Council of Ministers. The C.S. may also be requested kindly to obtain the orders of Govt. as to the introduction of the Bill in the Legislative Council and Assembly in the session (vide instruction 30(4) of Instructions under Rules of Business).

Id/-

For orders if the Bill should be circulated or [illegible] next meeting of the Council of Ministers.

Id/-

The Item will be included in the supplementary Agenda of the meeting of the Council of Ministers to be held on the 14th February 1953. P.W.D. is therefore requested kindly to supply 20 copies of the Bill and S.O.R. immediately for circulation to Ministers etc.

has.1

Id/-

BRA/2152-6333

H.Br. P. W. D.

As requested by P.A. to C.S. 20 copies of the draft Bill and S.O.R. may be supplied u.o. to him for circulation to Ministers.

Id/-

U.O.R. to P.A. to C.S. dt.6/2/53.
(with 20 copies of Bill & S.O.R.)

The Bill came before the Council of Ministers today. RLA (Shri Lad) stated that the omission of the word "immediately" underlined in red pencil on page 35 was under consideration because of some litigation and he would settle the point in consultation with the Bombay Municipal Solicitor Subject to this, the Bill was aproved and ordered to be published immediately. R.L.A. & Secy. L.D. may kindly advise about the word 'immediately'.

Id/-

hsn.31/5

Legal Department.

The draft Bill has been suitably revised in consultation with the Advocate General. The Statement of Objects and Reasons has also been slightly revised. Copy of the revised draft Bill together with the Statement of Objects and Reasons is sent herewith. After having obtained the signature of the Minister (Housing) below the Statement of Objects and Reasons, the Bill is being published in the Gazette today as L.A.Bill No.XX of 1953.

Sd/-
Assistant Secretary to Government.

U.R. to P.W.D., No.3984/B, dated the 28th February 1953.

Public Works Department
Bombay Castle, 1953.

Ordinance No. of 1952.

An Ordinance to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

Whereas both the Houses of the Legislature of the State of Bobay are not in session;

And whereas the Governor of Bombay is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of amending the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 in the manner hereinafter appearing;

Bom.LVII of 1947.

And whereas the instructions of the President under the proviso to clause (1) of article 213 of the Constitution have been obtained;

Now, therefore, in exercise of the powers conferred by clause (1) of Article 213 of the constitu tion, the Governor of Bombay is hereby pleased to make and promulgate the following Ordinance, namel y,

1. Short title, extent and commencement.-

(1) This Ordinance may be called the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1952.

(2) It shall come into force at once.

2. Amendment of section 4 of Bom.LVII of 1947.

Bom.LVII of 1947.

In section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, after sub-section (3), the following sub-section shall be added and be deemed always to have been added, namely:-

"(4).....

"(4) The expression 'premises belonging to the Government or a local authority' in subsection (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not indlude a building erected on any land held by any person immediately from the Government or a local authority, and notwithstanding anything contained in section 15, such person shall be entitled to create a tenacy in respect of such building or part thereof."

STATEMENT
(To be filled in.)

1952. Governor of Bombay

By order and in the name of
the Governor of Bombay.

Secretary to Government.

hss.7/6

LEGAL DEPARTMENT.

A requisite draft Bill for extending the life of the Rent Control Act and for converting Ordinance No.I of 1952, into an Act, is sent herewith. It is presumed that the intention is to extent the life of the Act for one year only and not upto 31st March 1959, as stated in the margin of Public Works Department note at page 32 ante.

2. Clause 2 of the Bill is intended to extend the life of the Act for one year. This provision has the effect of re-enacting the present Act for one year more. Although there is some authority in State of Bombay vs. Heman Alreja, 53 Bom.L.R.837, in holding that the continuance of the Act for one year more does not take away its character as an existing Act and the authorities set up there under for the control of house rents can continue to act under article 73 of the Constitution, the point is not free from doubt. Under the pesent Constitution, the Control of house rents in Cantonments is within the competence of the Central Legislature and not of the State Legislature. Part II of the Act relates to residential accommodation. When Bombay Act III of 1949 was enacted the Government of India had objected to some of the amendments proposed in Part III of the Act relating to Hotels and Lodging Houses on the ground that the original Act applies to Cantonments and that the said amendments by seeking to regulate house accommodation in Cantonments encroach on their field of legislation (vide Home Ministry telegram dated 24th March 1949). It was pointed out to the Government of India that the said amendments fall in the State Legislative field

under the entry Inns and inn-keepers. But the Government of India do not seem to have accepted the view and gave assent to the Bill with the observations that the State Government may have to take the risk of the said amendments being challenged in Court of Law. In view of the position stated above the entries relating to various Cantonments should, therefore, be omitted from all the three Schedules to the Act. The Government of India may be informed accordingly.

3. The Bill does not acquire any sanction or recommendation. But after the Bill is passed, it will have to be reserved for the consideration of the President with reference to article 254(2) of the Constitution.

4. The ensuing sessions of the Bombay Legislative Assembly and Council are likely to be called on 16th February 1953. The present Rent Control Act, expires on 31st March 1953, and Ordinance No1. I of 1953, will cease to operate at the expiration of six weeks from the date on which the Assembly and Council will meet i.e. after 29th March 1953 (vide article 213(2)(a) of the Constitution) Steps will have, therefore, to be taken to get the Bill passed and obtain the assent of the President in good time so that the Act may be published in the Gazette on or before 29th March1953.

Sd/-
Additional Secretary to Government.

U.R. to P.W.D.No. 1003/B, dated the 15th January 1953.

hss.7/5

IMMEDIATE.
CONFIDENTIAL.

No.BMA/3153-H
Public Works Department.

From

Shri N.K.Dravid. I.C.S.
Secretary to the Government of Bombay,
Public Works Department.

To

The Secretary to the Government of India,
Ministry of Home Affairs,
New Delhi

Subject: Ordinance to amend the Bombay Rents, Hotel and Lodging House Rates Control, Act, 1947.

Sir,

I am directed to forward herewith a copy of the judgment of the Supreme Court in Civil Appeal No. 18 of 1952 (Bhatia Cooperative Housing Society v.D.C.Patel) and to state as under:-

The said judgment of the Supreme Court in the Bhatia Co-operative Housing Society's case related to what is known as the New Sitaram Buildings. The plot which was the subject-matter of the said case was leased by the Bombay Improvement Trust. The property of the Bombay Improvement Trust now vests in the Bombay Municipal Corporation. The Supreme Court holds that by the terms of the lease the demise is not only of the land, but also of the building standing thereon. In support of this conclusion the Supreme Court relies on various clauses of the lease which provide -

1) that the lessee cannot on his own account use the building in any way he likes,

2) that if the premises are destroyed by fire or otherwise, the lessee must reinstate them,

3) that on forfeiture the lessor can re-enter on the land as well as buildings.

According to the Supreme Court all these considerations indicate that the lessor has the dominant voice and real ownership and his interest cannot be described as merely sentiment. On these facts, the Supreme Court held that the premises in question belonged to the local authority

and under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, were exempt from its operation. Apart from the question whether the view of the supreme court is correct or not, the interpretation put by the Supreme Court on the lease will be the declared law and will under Article 141 of the Constitution be binding on all Courts. Although the above decision relates to the construction of the lease relating to land owned by the Bombay Municipal Corporation, the leases relating to reclamation and other lands owned by Government are similarly worded. It is, therefore, necessary to amend the Bombay Rents Hotel and Lodging House Rates Control Act, 1947. In order to avoid unnecessary complications which may arise in consequence of the attempts of landlords of buildings on such lands, it is necessary that an Ordinance will have to be promulgated.

2. I am directed to forward herewith a copy of the draft Ordinance to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, prepared for the purpose in view.

3. The subject matter of the Ordinance falls under entries 5, 18 and 35 in List II and entries 6 and 13 in List III in the Seventh Schedule to the Constitution. As the provisions of the Ordinance are repugnant to the provisions of the Bombay Rents and Hotel and Lodging House Rates Control Act, 1947 which is an existing law relating to entry 6 in the Concurrent Legislative List it is necessary to obtain the instructions of the President under the proviso to clause (1) of Article 213 of the Constitution before the proposed Ordinance is promulgated.

4. I am to request you to be so good as to obtain the necessary instructions of the President for promulgation

of the proposed Ordinance and to communicate the same the same to this Department at an early date.

Yours faithfully,

Sd/-
Secretary to Government.

hss.31/5

LETTER.

Confidential
IMMEDIATE.
No.BHA/2152-H.

Public Works Department,
Bombay Castle (Bombay No.1)
11th December 1952.

To

The Secretary to the Governor, of Bombay,
Raj Bhavan. Bombay.

Subject: Promulgation of an Ordinance regarding rent control.

Sir,

A draft Ordinance amending section 4 of the Bombay Rents, Hotels and Lodging House Rates Control Act, 1947, which aims at bringing the premises erected on lands taken on lease from Government or a local authority within the scope of the Act is sent herewith, together with a Statement of Objects and Reasons. Due to the recent judgment of the Supreme Court, it is feared that the premises of the type mentioned above will be treated as excluded from the operation of the Act and the landlords may start harassing the tenants. As both the Houses of Legislature are not in Session, it is necessary to amend the Act by an Ordinance. I am directe to request you to obtain the approval of the Governor to the same and his signature ~~to obtain the approval~~ on the copy.

2. The subject matter of the Ordinance falls under entries 5, 18 and 35 in List II and entries 6 a 13 in List III in the Seventh Schedule to the Constitution. As the provisions of the Ordinance are repug to the provisions of the Bombay Rents, Hotel and Lodg House Rates Control Act, 1947, which is an existing relating to entry 6 in the Concurrent Legislative Li approval of the President was necessary and the same been obtained, vide copy enclosed of telegram No.28, 52-Judt. dated the 8th December 1952, from the Govt. India, Ministry of Home Affairs.

3.....

3 Kindly treat this reference as very urgent.

Yours faithfully,

Sd/-
Under Secretary to the Govt. of Bombay,
Rehabilitation Department.

D.A.: 1) Copy or Ordinance with
Statement of Objects &
Reasons.

2) Copy of the telegram.

hss.31/5

PUBLIC WORKS DEPARTMENT

Bombay Castle, 13th December 1952

ORDINANCE NO.1 of 1952.

An Ordinance to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.

WHEREAS both the Houses of the Legislature of the State of Bombay are not in session;

AND WHEREAS the Governor of Bombay is satisfied that circumstances exist which render it necessary for him to take immediate action for the purpose of amending the Bombay Rents, Hotel and Lodging House Rates Act, 1947, and in the manner hereinafter appearing;

AND WHEREAS the instructions of the President under the proviso to clause (1) of Article 213 of the Constitution have been obtained;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of Article 213 of the Constitution, the Governor of Bombay is hereby pleased to make and promulgate the following Ordinance, Namely:-

1. Short title and commencement.- 1) This Ordinance may be called the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1952.

(2) It shall be come into force at once.

2. Amendment of section 4 of Bom.LVII of 1947.- In section 4 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, after sub-section (3), the following sub-section shall be added & and be deemed always to have been added, namely:-

"(4) The expression 'premises belonging to the Government or a local authority' in sub-section (1) shall, notwithstanding anything contained in the said sub-section or in any judgment, decree or order of a court, not include a building erected on any land held by any person immediately from the Government or a local authority, and notwithstanding anything contained in section 15, such person shall be entitled to create a tenancy in respect of such building or part thereof;

STATEMENT.

The Supreme Court in its judgment on a case before it has decided that the premises which are on land taken on lease from the Bombay Municipal Corporation, should be held as belonging to the local authority and that under section 4(1) of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, such premises were exempt from the operation of the Act. The interpretation put by the Supreme Court on the lease would lead to the exclusion from the Act of all the numerous premises built on lands leased from Government or a local authority and would deprive thousands of people from the benefits of the Act ~~at~~ ~~xit~~ ~~him~~ and make them victims of the evils of pugree, unrestricted rents, wanton eviction etc. In order to avoid unnecessary complications which may arise in consequence of the Supreme Court's judgment, it is necessary to take immediate steps to amend section 4 of the Act suitably, so that the provisions of the Act will definitely cover premises erected on lands leased from Government or a local authority. This Ordinance seeks therefore to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947, for the purpose mentioned above.

Sd/-
Governor of Bombay.

Bombay, 12th December 1952.

By order and in the name of the
Governor of Bombay,

Sd/-
Secretary to Government.

hrs.31/5